

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS FOR  
) THE FIFTH JUDICIAL CIRCUIT

DOCKET NO: 2011-CP-40-1320

**RECEIVED**

FEB 05 2016

SC Court of Appeals

Delories Jenkins,

Plaintiff,

Vs.

Refuge Temple Church Of God In Christ,  
Inc., and Wayne Penn, Sr., Daniel Ward,  
Jr., James A. Tucker and Eronda Jackson,  
Individually and as Members of the Board  
of Directors of Refuge Temple Church Of  
God In Christ, Inc.,

Defendants.

ORDER

JEANETTE M. McBRIDE  
C.C.P. & G.S.

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FILED

This is an action for breach of contract and failure to pay wages pursuant to the South Carolina Payment of Wages Act, *S.C. Code Ann. § 41-10-10, et. seq.* and was before me for trial on June 18, 2012. Present at the trial were Plaintiff Delories Jenkins, along with her attorneys, Kenneth C. Hanson and Walter M. Riggs. The Defendant Refuge Temple Church Of God In Christ, Inc., was represented by Timothy J. Newman, Esquire. Defendants Wayne Penn, Sr. and Daniel Ward, Jr., were also present.

A third cause of action for tortious interference with contract was withdrawn and dismissed by Plaintiff's counsel at the outset. Likewise, Plaintiff's counsel dismissed Wayne Penn, Sr., Daniel Ward, Jr., James A. Tucker and Eronda Jackson as parties Defendant, effectively leaving the Church as the sole party Defendant.

Based on the testimony elicited at the hearing, I make the following findings of fact and conclusions of law:

1. Refuge Temple Church Of God In Christ, Inc. was founded by Pastor Edward Jenkins in June of 1997. He was its incorporator, first pastor and a member of the Board of Directors.

2. The Defendant Church was incorporated under the laws of this State, and its Articles of Incorporation (Plaintiff's Exhibit # 4), filed with the South Carolina Secretary of State on June 16, 1997, provided at Article V that "[t]he powers of the Corporation shall be

exercised by or under the authority of and the business and affairs of the Corporation shall be managed under the direction of a Board of Directors which shall have three (3) directors initially.”

3. Article VIII of The Defendant Church’s Articles of Incorporation (Plaintiff’s Exhibit # 4) provided that “[t]he Corporation will not have members and shall be governed exclusively by its Board of Directors.”

4. Article Three, Section 1, of the Defendant Church’s Bylaws (Plaintiff’s Exhibit # 3) provided generally that the members of the congregation would be nonvoting members and that the Board of Directors to be voting members.

5. Article Four, Section 1, of the Defendant Church’s Bylaws (Plaintiff’s Exhibit # 3) provided that “[t]he affairs of the Church shall be managed by the Board of Directors whose members shall have a fiduciary obligation to the Church.”

6. Article Four, Section 2, of the Defendant Church’s Bylaws (Plaintiff’s Exhibit # 3) provided that “[t]he number of Directors shall be no less than three (3) and shall have no maximum number.”

7. Plaintiff Delories Jenkins was married to Pastor Jenkins. She was involved with and assisted her husband with the Defendant Church’s ministry from its infancy until Pastor Jenkins’s death.

8. A special meeting of the Board was called on March 13, 2002 pursuant to Article Four, Section 2, of the Defendant Church’s Bylaws (Plaintiff’s Exhibit # 3), which provided that “[s]pecial meetings of the Board of Directors may be called by or at the request of any two (2) Directors....”

9. According to the minutes of this special meeting of March 13, 2002, (Plaintiff’s Exhibit # 1), the Board of Directors of Defendant Church discussed, voted on, approved and authorized an employment agreement that provided for, among other things, continued employment and retirement for the Pastor and Mrs. Jenkins.

10. Pursuant to this special meeting, the Board of Directors and Pastor Jenkins entered into an agreement entitled “PASTOR’S EMPLOYMENT AND RETIREMENT AGREEMENT” (Plaintiff’s Exhibit # 2), which was executed March 13, 2002 by Pastor Jenkins and the other two members of Defendant Church’s Board of Directors, Connie Bowman and Daniel W. Ward, Jr.

11. Section 4 (A.) of the employment agreement provided that “[i]n the event of the PASTOR’S death, if PASTOR is survived by his spouse, Delories Jenkins, a monthly sum equivalent to the PASTOR’S monthly salary and housing allowance, which will become salary at the time of his death shall be paid to Mrs. Delories Jenkins for the remainder of her life, even if she leaves the church.”

12. Section 5 of the agreement provided that “[i]n the event that the PASTOR is totally disabled, mentally and physically, and that such disability will be permanent and continuous during the remainder of his life, PASTOR Elder Edward Jenkins will be paid Housing Allowance and salary.”

13. Further, Section 6 (D.) of the agreement provided that “... in the event of PASTOR death or total disability, this agreement shall become irrevocable.”

14. Pastor Jenkins and Defendant Church performed according to the agreement, and Pastor Jenkins was paid pursuant to the agreement until his death on April 04, 2004.

15. After Pastor Jenkins’s death, Defendant Church continued to honor the contractual agreement, paying Plaintiff the same monthly salary amount and housing allowance of One Thousand Five Hundred Seventy-Five and No/100 (\$1,575.00) Dollars each month (\$1,800 less \$225 deductions) throughout all of the years 2004 through January, 2010.

16. By letter dated February 4, 2010 (Defendant’s Exhibit # 3), Defendant Church advised Plaintiff that the church would no longer continue to pay her the \$1,575 per month after March of 2010. The letter further indicated that Plaintiff would receive \$500 per month from April through December, at which time all monetary payments would cease. Despite this assertion, Defendant Church made no further payments to Plaintiff after a last check paid in April of 2010 in the amount of Five Hundred and No/100 (\$500.00) Dollars.

17. Plaintiff’s agreement, entitled “PASTOR’S EMPLOYMENT AND RETIREMENT AGREEMENT” (Plaintiff’s Exhibit # 2), is a valid and enforceable contract. “A corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and by any bylaws made pursuant thereto; acts beyond the scope of the powers so granted are ultra vires.” *Seabrook Island Property Owner Association vs. Pelzer*, 292 S.C. 343, 356 S.E. 2d 411 (Ct. App. 1987). The Board of Directors had full authority to enter into said agreement pursuant to the above-cited Articles of Incorporation and

By-Laws. Accordingly, Defendant Refuge Temple Church Of God In Christ, Inc., has breached the terms of the employment and retirement agreement without justifiable defense.

18. At trial, Defendant Church posited that the agreement and the payments to Plaintiff were improper and an "ultra vires" act because the Church congregation had not voted on it. However, the Defendant Church operated pursuant to this agreement for eight years, from March, 2002 until April of 2010, and six of those years were after Pastor Jenkins' death. Laches is an equitable doctrine defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Strickland vs. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (2007), *All Saints Parish, Waccamaw vs. Protestant Episcopal Church in the Diocese of South Carolina*, 358 S.C. 209, 595 S.E.2d 253 (S.C. App. 2004). Further, any assertion on Defendant Church's part that Pastor Jenkins voting on the agreement constituted an "ultra vires" act fails to overlook the fact that Article Four, Section 8, of the Defendant Church's Bylaws (Plaintiff's Exhibit # 3) provided that "[t]he act of a majority of the Board of Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a great number is required by law or by these Bylaws." The two other members of the Board of Directors, Connie Bowman and Daniel W. Ward, Jr., constituted a quorum.

19. Defendant Church herein owes Plaintiff the sum of Sixteen Thousand Eight Hundred Twenty-Five and No/100 (\$16,825.00) Dollars, as of February 24, 2011. Defendant Church also owes Plaintiff for the months of March, 2011 through June, 2012 [16 months at \$1,575.00], and this sum amounts to Twenty-Five Thousand Two Hundred and No/100 (\$25,200.00) Dollars. Thus, the total sum past due to Plaintiff on the agreement is Forty-Two Thousand Twenty-Five and No/100 (\$42,025.00) Dollars.

20. Plaintiff testified that she will soon be 70 years of age and, based on *S.C. Code Ann. § 19-1-150*, she is expected to live another 17.12 years.

21. With annual payments of Eighteen Thousand Nine Hundred and No/100 (\$18,900.00) Dollars (\$1,575 x 12), the Plaintiff's loss of future payments resulting from Defendant Church's breach amounts to Three Hundred Twenty-Three Thousand Five Hundred Sixty-Eight and No/100 (\$323,568.00) Dollars (\$18,900 x 17.12). Adding this amount to the past due amount of Forty-Two Thousand Twenty-Five and No/100 (\$42,025.00) Dollars, the

total amount of Defendant Church's breach is Three Hundred Sixty-Five Thousand Five Hundred Ninety-Three and No/100 (\$365,593.00) Dollars.

22. With respect to Plaintiff's claim for recovery under the South Carolina Payment of Wages Act, by her own admission, Plaintiff was not employed by and did not perform any labor for the Defendant Church. The South Carolina Payment of Wages Act is concerned with payment of wages for labor already completed. Mathis vs. Brown & Brown of South Carolina, Inc., 389 S.C. 299, 698 S.E. 2d 773 (2010). Therefore, Plaintiff is not entitled to recovery under the Payment of Wages Act. Even assuming that the payments made per the agreement were retirement payments, S.C. Code Ann. § 41-10-10 (2) provides that pension and retirement plans are not to be considered wages for purposes of the act. Accordingly, Plaintiff is not entitled to recovery under the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, et. seq.

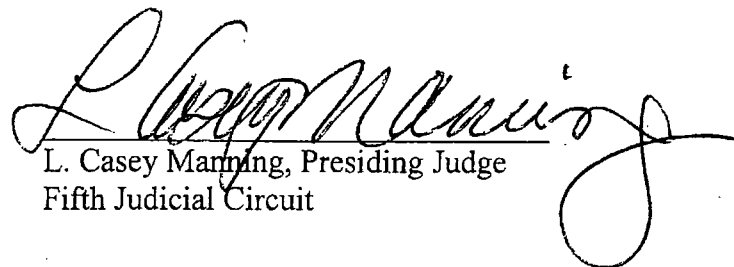
Based on the above, I find that Plaintiff Delories Jenkins is entitled to judgment against the Defendant Church in the amount of Three Hundred Sixty-Five Thousand Five Hundred Ninety-Three and No/100 (\$365,593.00) Dollars.

NOW, THEREFORE, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff Delories Jenkins is hereby awarded judgment in the amount of Three Hundred Sixty-Five Thousand Five Hundred Ninety-Three and No/100 (\$365,593.00) Dollars, against the Defendant Refuge Temple Church Of God In Christ, Inc.

AND IT IS SO ORDERED.

Columbia South Carolina  
Oct 24, 2012

  
L. Casey Manning, Presiding Judge  
Fifth Judicial Circuit

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COUNTY OF RICHLAND

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*CERTIFICATE OF SERVICE*

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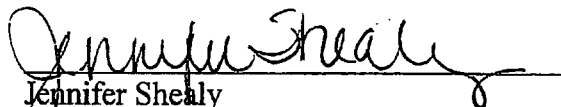
SC Court of Appeals

I, the undersigned employee of Hanson Law Firm, P.A., do hereby certify that I have this date served counsel in the above referenced matter with a cpy of the Order of Judge L. Casey Manning, by depositing same in the United States Mail, postage paid and addressed as follows:

COUNSEL SERVED:

Timothy J. Newton, Esquire  
Murphy & Grantland, PA  
Post Office Drawer 6648  
Columbia, South Carolina 29260

October 25<sup>th</sup>, 2012



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